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DEC 5 1955
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IN THE

Supreme Court of the United States

ARTHUR THOMAS,
Petitioner,

vs.

ARIZONA,
Respondent.

No. 330 MISC.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI

State of Arizona, Respondent,

By: ROBERT MORRISON
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Phoenix, Arizona

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WES POLLEY
Cochise County Attorney

EARL ANDERSON
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Cochise County, and Member of
Bar of the above-entitled Court.

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No.....

Comes now the Respondent, The State of Arizona, ex rel. Robert Morrison, The Attorney General of The State of Arizona, in opposition to the application for Writ of Certiorari made herein.

State of Arizona, Respondent,

By: ROBERT MORRISON
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STATEMENT OF THE CASE

I

On June 19, 1953, Petitioner was convicted of murder in the Superior Court of Cochise County, Arizona. Petitioner appealed to the Arizona Supreme Court from that judgment and from an order denying his motion for a new trial.

II

On October 18, 1954, in Cause No. 1045, the Supreme Court of Arizona affirmed the judgment of the lower court. *State of Arizona v. Arthur Thomas,* 78 Ariz. 52, 275 P. 2d 408.

III

On November 16, 1954, the Petitioner's motion for a rehearing was denied.

IV

On December 2, 1954, Petitioner filed a motion for a new trial in the Superior Court, Cochise County, Arizona, said motion was primarily based on the grounds of new found evidence. The motion, filed under the Rules of Criminal Procedure, 357(c) (Sec. 44-2004(c), ACA, 1939), was denied and Petitioner appealed to the Arizona Supreme Court.

V

On June 28, 1955, in Cause No. 1072, the Arizona Supreme Court affirmed the lower court's denial of a new trial. *State of Arizona v. Thomas,* 79 Ariz. 158, 285 P. 2d 612.

VI

On September 16, 1955, the Arizona Supreme Court denied a motion for rehearing.

VII

On October 24, 1955, Petitioner filed application for a writ of certiorari.

PROPOSITIONS OF LAW

I

An application for a writ of certiorari is untimely if made more than ninety days after entry of the judgment sought to be reviewed.

II

This Court does not have jurisdiction to entertain an untimely petition for a writ of certiorari.

III

Where a judgment is entered by a lower court and subsequently another judgment in the proceeding is entered based on different issues and makes no change in the first judgment, the time for filing a petition for writ of certiorari to review the issues decided by the first judgment runs from the time of its entry.

IV

A Writ of certiorari will be granted only where there are special and important reasons therefor, as where a state court has decided a federal question of substance not theretofore decided by the United States Supreme Court, or has decided it in a way probably not in accord with applicable decisions of the United States Supreme Court.

ARGUMENT

I

Rule 22(1) of the Supreme Court Rules requires that an application for a writ of certiorari be made within ninety days after the entry of the judgment sought to be reviewed. The petition herein does not set forth explicitly, as required by Supreme Court Rule 23, 1(b)(i), the date of the judgment or decree sought to be reviewed.

II

This Court has held that it does not have jurisdiction to entertain an untimely petition for writ of certiorari and that an untimely petition will be denied. *State of Maryland vs. Baltimore Radio Show,* 338 U.S. 912, 94 L.Ed. 562; *Hope Basket Company vs. Product Advancement Corporation,* 342 U.S. 833, 96 L.Ed. 630, 72 S.Ct. 44; *Rust Land and Lumber Company vs. Ed Jackson, et al,* 250 U.S. 71, 63 L.Ed. 850, 39 S.Ct. 424; *Citizens Bank vs. Mary Opperman,* 249 U.S. 448, 63 L.Ed. 701, 39 S.Ct. 330.

Respondent respectfully submits that this petition seeks to review the judgment of the Arizona Supreme Court entered October 18, 1954, and does not seek to review any issue that was decided by the judgment of that Court entered June 28, 1955.

The petition herein sets forth, on page 2 thereof, the questions presented for review by this Court. The questions presented here were before the Arizona Supreme Court when it entered its judgment of October 18, 1954. *State of Arizona vs. Thomas,* 78 Ariz. 52, 275 P.2d 408.

None of the questions presented for review by this petition were before the Supreme Court of Arizona when it entered its judgment on June 28, 1955. *State of Arizona vs. Thomas,* 79 Ariz. 158, 285 P.2d 612.

The Petitioner is seeking by this petition filed on September 24, 1955, to have this Court review by certiorari the issues decided by the Arizona Supreme Court in its judgment of October 18, 1954.

III

The issues sought here to be reviewed were decided by the judgment of the Arizona Supreme Court on October 18, 1954, and were not a part of, nor affected by, the judgment of the Arizona Supreme Court of June 28, 1955. This Court has held that it is only when the lower court changes matters of substance in a judgment previously rendered that the period within which a petition for writ of certiorari may be filed begins to run anew. *Federal Trades Commission vs. Minneapolis-Honeywell Regulator Company,* 344 U.S. 206, 97 L.Ed. 245, 73 S.Ct. 245.

Respondent respectfully submits that the June 28, 1955, judgment of the Arizona Supreme Court did not start a new period within which to apply for a writ of certiorari as to the issues decided by the judgment of October 18, 1954.

IV

Although the petition for a writ of certiorari was not untimely as to the judgment of the Arizona Supreme Court entered June 28, 1955, and for which a rehearing was denied on September 16, 1955, the petition herein does not present any issue decided by that judgment as a question for review by this Court.

The sole question before the Arizona Supreme Court in the judgment of June 28, 1955, was whether or not the lower court had erred in refusing to grant Petitioner's motion for a new trial based on statements made by Petitioner under the influence of sodium amythal. *State vs. Thomas,* 79 Ariz. 158, 285 P.2d 612.

It is respectfully submitted that no federal question was decided by the Arizona Supreme Court by its judgment of June 28, 1955, as required by Rule 19, Supreme Court Rules, for the issuance of a writ of certiorari.

CONCLUSION

The only judgment sought to be reviewed by this petition for a writ of certiorari is the judgment of the Arizona Supreme Court of October 18, 1954, which judgment has not been altered, modified or affected by any subsequent judgment or decree. This petition filed October 24, 1955, is untimely and should be denied.

Respectfully submitted,

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